IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

MISC.CIVIL APPLICATION NO. 86 OF 2006

Sou. Priya D. Kulkarni. .. Applicant.

Versus

Dnyanesh H. Kulkarni. .. Respondent.

...

Mr. R.R. Salvi for the Applicant.

Mr. N.V. Bandiwadekar for the Respondent.

CORAM : D.G. KARNIK, J

DATED : 15th November 2006

P.C.:

1. Heard Counsel for the parties. This petition under Section 24 of the Code of Civil Procedure is filed by the wife for the transfer of the marriage petition which is filed by the respondent husband against her in the Court of Civil Judge Senior Division at Kolhapur.

2. In the petition, the petitioner has averred that the respondent drove her out of the matrimonial house and the petitioner is required to stay with her parents at Kedgaon, District Ahmednagar. She has a daughter aged about 6 years and has no means of livelihood and is

dependant on her father. She cannot travel from Kedgaon, District Ahmednagar to Kolhapur for defending the matrimonial proceeding. She has further pleaded that despite the order of payment of the maintenance passed by the Judicial Magistrate, the respondent has not paid her the maintenance.

3. The respondent, by filing an affidavit in reply has opposed the petitioner's application. He has annexed a copy of the order dated 30th September 2006 passed by the Judicial Magistrate directing the respondent to pay maintenance of Rs.1500/- per month to the applicant and Rs.1,000/- to the child within one month. However, there is no averment in the affidavit that the amount of maintainance is paid. In my view, it would be extremely difficult for the petitioner wife to travel from Kedgaon, District Ahmednagar to Kolhapur and defend the matrimonial proceeding. In several decisions including in Rajani Kishor Pardeshi v/s. Kishor Babulal Pardeshi (2005) 12 S.C.C. 237, the Supreme Court has held that in proceedings of such nature convenience of the wife is required to be taken into consideration. In the facts and circumstances of the case it would be appropriate to allow the application. Accordingly, the Misc. Application is allowed in terms of prayer clause (b).

(D.G. KARNIK, J)